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4 LEONARD G CISNEROS, et al.,  
5 Plaintiffs,  
6 v.  
7 WELLS FARGO BANK, N.A.,  
8 Defendant.

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10 Case No. [5:16-cv-00084-PSG](#)  
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**ORDER GRANTING MOTION TO  
DISMISS**

(Re: Docket No. 18)

13 Defendant Wells Fargo Bank, N.A. moves to dismiss Plaintiffs Leonard G. Cisneros and  
14 Gretel R. Cisneros' first amended complaint.<sup>1</sup> Wells Fargo's motion to dismiss is GRANTED,  
15 with leave to amend.<sup>2</sup>

16 The heart of Plaintiffs' allegations is they and Wells Fargo had a deal, and Wells Fargo  
17 didn't hold up its side of the bargain. Plaintiffs allege that pursuant to a settlement agreement,  
18 they submitted a loan modification application to Wells Fargo, and Wells Fargo never sent them  
19 an "actual final written determination of eligibility for this modification."<sup>3</sup> But Wells Fargo has  
20 submitted copies of letters that it sent to Plaintiffs denying their loan modification application,  
21 however,<sup>4</sup> and Plaintiffs agree that the court can consider these documents.<sup>5</sup> The letters indicate

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23 <sup>1</sup> See Docket No. 18.

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25 <sup>2</sup> Dismissal without leave to amend is only appropriate if it is clear that the complaint could not be  
saved by amendment. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.  
2003).

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27 <sup>3</sup> Docket No. 15 at ¶ 22.

<sup>4</sup> See Docket No. 19-1 at Ex. B.

1 that Wells Fargo reviewed and denied both Plaintiffs' loan modification application and also  
2 Plaintiffs' appeal from that denial.

3 At a hearing today, Plaintiffs did not deny receiving the letters, but argued that the letters  
4 are insufficient because they do not comply with the content requirements for a "final written  
5 determination." Plaintiffs did not allege that in their first amended complaint, however. Because  
6 the letters show that the Plaintiffs were notified in writing of their ineligibility for a loan  
7 modification, Wells Fargo's motion to dismiss is GRANTED, with leave to amend. Any amended  
8 complaint shall be filed within 30 days.

9 **SO ORDERED.**

10 Dated: May 10, 2016

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PAUL S. GREWAL  
United States Magistrate Judge

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United States District Court  
Northern District of California

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<sup>5</sup> Plaintiffs initially opposed Wells Fargo's request for judicial notice of the letters, but agreed at oral argument that the court could consider them. *See* Docket Nos. 32, 44.